Supreme Court, U.S.
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No. 97-439

In The

Supreme Court of the United States

October Term, 1997

ERNEST L. JARRETT, Attorney,
Petitioner,

vs.

ROSE MARY GREEN, *et al.*
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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SUMMARY OF ARGUMENT

The gravamen of Respondent's argument in this instant matter is that Appellant, Ernest Jarrett, has acted in contravention of the Estate's interest, the interest of other affected parties, and all involved here before this Court. This foundational premise is critical to Respondent's argument because an understanding of Petitioner's conduct and own self-interests elucidates the issues in this matter. First of all, as the District Court raised in its rulings, Jurisdiction was proper before this Court from the time of Attorney Brandy's filing of her alleged "well-pled" complaint, which set forth causes of action and claims against **all** Defendants on federal jurisdictional bases. A cursory view of the Complaint (R. 10 - Complaint) clearly establishes this fact alone. From this point, jurisdiction, although numerously tested and challenged, withstood any judicial muster or scrutiny. After the Defendant City of Detroit removed the action, none of the parties in this case, including this Respondent, ever challenged the removal or overcame any allegations that removal was defective. Further, the remand of this case was improper.

Subsequently, Petitioner's failed attempt at raising a Fed.R.Civ.P 41(a)(1)(i) Stipulation of Dismissal was damnum and improper from its inception. It failed to comply with the standards under the rule where only Attorney Brandy, who was wholly incapable of representing or binding the estate at that time, and Defendant executed same. On several bases, the District Court found that it properly had jurisdiction and properly maintained it throughout the course of the proceedings. Further, the conduct of the parties acquiesced in the court's jurisdiction while simultaneously protesting the jurisdiction.

This Respondent submits that the only reason

jurisdiction continued to be challenged by Attorneys Brandy and Jarrett below and why Attorney Jarrett continues to waste the court's time arguing this issue now goes back to this Respondent's premised argument, that Petitioner is only acting in his own selfish interests, towards the dereliction of the interests of everyone else, including and especially considering, his own client.

This attorney, in large part, entered this case to prevent and thwart the inimical and inapposite effects of Attorneys Brandy and Jarrett, after a co-personal representative clearly saw such damaging efforts and fled to retain this attorney. The height of Attorneys Brandy and Jarrett's conduct was evidenced by co-personal representative Ms. Grubbs' discharge of Jarrett and Brandy. However, the evident shame of their conduct is shown where their only remaining client, Rose Mary Green, discharged them, citing her distrust of their behavior.

The other arguments this Respondent submits pertain to the issue of attorneys fees. And, since the law clearly addresses this issue, and imposes a valuation of quantum meruit to determine the remaining distribution of fees, the only remaining issue is the actual division.

Respondent seeks, that in light of Petitioner Jarrett's unethical, outrageous, mad, reprehensible and contemptible behavior in the lower court and in this appeal, that his portion of the attorneys fees be reverted to the estate for an additional distribution to the estate, including Respondent, Edniquech Grubbs and her family. Based on the supportive and assertive factual and legal basis that follows in this Brief, it is submitted that the lower court's ruling be adhered to with an Order reflecting the above modification as set forth herein.

REASONS TO DENY PETITIONERS REQUEST FOR A WRIT OF CERTIORARI

I. WHETHER THE DISTRICT COURT ABUSED ITS DISCRETION BY MAINTAINING JURISDICTION PURSUANT TO 28 USC §1343(3)?

Petitioner has averred in his appeal that the district court, presided by the Honorable Gerald Rosen, did not and never had subject matter jurisdiction over this matter because the only federal claims asserted in Plaintiff's Complaint were asserted against the individual police officer defendants, who were never served or appeared in the case. Accordingly, Petitioner's argument is that only the individual defendants could have removed the action.

However, Petitioner's argument is improperly and erroneously grounded on the theory that the stipulation for dismissal, entered into by Attorney Brandy and Mr. Quinn only, on behalf of the City, effectively relinquished jurisdiction from the district court. Jurisdiction had, effectively, been consented to by the interested parties, his own client, and the overall conduct of the attorneys.

Petitioner's argument is without merit and not grounded in the controlling facts and law of this case. Furthermore, without proceeding to directly address the governing rules and case law in this matter, it is submitted that Petitioner's arguments are no more than mere subterfuge to mask his selfish interests in pursuing the original requested attorneys fee amount of 1.2 million dollars and in prohibiting this counsel from receiving his share of the attorneys fees, although through oral and written edicts of the district court, Brandy and Jarrett are not legally entitled to the fees under their original phallus contingency agreements and,

furthermore, the district court has found that Attorney Dorsey is entitled to the reasonable value of his services, in quantum meruit.

Petitioner's translucent actions are clearly seen and evidenced by the structure of his arguments in his appeals and in his actions in the lower court where he, *inter alia*, sought competing jurisdiction in circuit and probate court in derogation of the interests of other parties, including his clients, where he constantly worked against the guise of the district court, where he attempted to prevent this attorney from critical negotiations with the City Council, and where he attempted to engage such procedural and ethical flaws as setting up the escrow account and issued checks in the name of Rose Mary Green only, who served as only one of the co-personal representatives.

Petitioner's actions have been methodical in pursuing his attorneys fees, either directly or vis-a-vis this feigned jurisdiction argument.

Petitioner cannot establish that the 'Removal' was defective

The applicable law evidencing the weakness of Petitioner's argument was set forth in Judge Rosen's Opinion and Order dated November 7, 1994. (R. - Memorandum Opinion and Order, 11/7/94, p. 8). As set forth in Judge Rosen's Order, the allegations in Plaintiff's well-pled complaint under Count IV and V were sufficient to allege a Section 1983 deprivation of civil rights claim against the City under Monell v Department of Social Services, 426 US 658; 98 Sct 2018 (1978); City of Canton v Harris, 489 US 378; 109 Sct 1197 (1989), and Marchese v Lucas, 758 F2d

181(6th Cir 1985), cert. denied, 480 US 916 (1987).[1] Further, well-established precedent of United States Supreme Court cases and the Sixth Circuit Court of Appeals cases in Arcadia Women's Health Center v Operation Rescue, 929 F2d 530, 534 (9th Cir. 1991), establishes the general principle that:

> "[t]he relevant jurisdictional question from the result of these proceedings is not propriety of removal, but only whether the federal district court would have had original subject matter jurisdiction had the case been originally filed in the federal court."

The Supreme Court in Grubbs v General Electric Credit Corporation, 408 US 699; 92 Sct 1344; 31 Led2d 612 (1972), further expounded the general principle. The court explained:

> Long-standing decisions of this Court make clear, [that] where after removal a case is tried on the merits without objection and the federal court enters judgment, the issue in subsequent proceedings on appeal is not whether the case was properly removed, but whether the federal district court would have had original jurisdiction of the case had it been filed in the court.

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[1] Count V was captioned "Deprivation of Constitutional Rights by Individual Defendants", however, it is critical to note that it incorporated by reference County IV, "Negligent Training and Supervision," which was directed against the City of Detroit, the party who was actually served and who appeared in this action.

In Morda v Klein, 865 F2d 782 (6th Cir 1989), the Sixth Circuit adopted the rationale of the Grubbs rule in the context of a defective removal under federal question jurisdiction of a RICO action, explaining:

> The *Grubbs* rule is eminently sensible, and conservative of judicial economy; it prevents a party who waits until after he loses in the Court below to object to the jurisdictional defect from getting a second bite at the apple. Provided that the district court, as here, would have had original jurisdiction had the action been filed in the first instance in the federal court and would have had jurisdiction at the time of final judgment it works no expansion of federal jurisdiction.

Factually, at no time did the Petitioner raise this 'defective removal' argument following the Defendant City of Detroit's timely filing of its removal action. As such, Petitioner is, in essence, estopped now from raising this defense for failure to satisfy the time limitations under Fed.R.Civ.P. 1447(c).[2] Moreover, Petitioner never raised this argument at any time thereafter during the course of the proceedings.

Counsel submits that such action was not raised during the appropriate time limitation following the City of

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[2] Fed. R. Civ. P. 1447(c) provides
> "[a] motion to remand on the basis of any defect in removal procedure must be made within thirty (30) days".

Detroit's removal because Petitioner believed that he could obtain an anticipated "stamped" approval of the settlement and award of originally requested attorneys fees of over a million dollars. Now, Petitioner seeks to raise this argument because as the court set forth in *Morda*, supra, the parties are attempting to get their second bite of the apple attorneys fees by divesting the district court of jurisdiction and hoping to maybe present his request for attorneys fees before a more amenable court.

The facts in this case are not wholly distinguishable from the cases relied upon in support of this counsel's argument herein. As such, where this action was removed to the district court on the basis of federal question jurisdiction under the IV, V, VIII, and XIV Amendments of the United States Constitution and 42 USC, sec(s), 1983, 1985, 1986 and 1988, the federal district court would have had original federal jurisdiction over this action anyway. Based on this, Petitioner's argument is incredulous, and he cannot now argue that the district court lacks jurisdiction over this case on improper removal grounds.

Fed. R. Civ. P. 41(a)(1) Stipulation to Dismiss

Petitioner further contends that the submitting of the January 7, 1993, Voluntary Stipulated Order of Dismissal pursuant to Fed.R.Civ.P. 41(a)(1)(ii), effectively dismissed the case and divested jurisdiction from the district court. (R.10 - Stipulation). Petitioner's argument fails for two (2) reasons: First, the Voluntary Order of Dismissal was not in compliance with the rule it was brought under and secondly, the parties continued to voluntarily act by their own conduct and actions, under the aegis of the Court, evincing a contrary characterization of the status of the case.

Fed.R.Civ.P.41(a)(1) provides, in pertinent part, that an action may be dismissed *"by having all the parties who have appeared in the action sign a stipulation of dismissal"*. [FRCP 41(a)(1)(ii)] However, the determinative language of the rule requires that *"all parties in the action"* sign the dismissal. This language is literal and does not suggest interpretation. If we were to accept the continuum of Petitioner's argument as true, the stipulation is still ineffective and facially incompliant where it was only signed by Anthony Quinn, the attorney for Defendant City of Detroit, and Attorney Brandy only, who, as the record established below evinces, was not even representing co-personal representative Edniquech Grubbs at the time of the execution.[3]

At the time of the filing of the dismissal, Attorney Thurswell effectively remained co-counsel of record for Edniquech Grubbs in both her individual and co-personal

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[3] On January 5, 1993, a Proposed Order for Stipulation of Attorneys was filed by attorneys Brandy and Thurswell for Edniquech Grubbs, which was *never entered with the Court*.

At the 11th hour on January 7, 1993, an Appearance for Edniquech Grubs was filed by Attorney Brandy. (R.9 - Appearance). At or around the same time, Attorney Thurswell's Motion to Withdraw had not even been ruled on yet by the Court. (R.3 - Motion). This, in effect, meant that at the least, Attorney Thurswell's signature should have appeared on the Order for Dismissal. The other effect is that it limited Attorney Brandy's capacity and ability to execute the Order of Dismissal for the 'parties' she claim were necessary. In light of these factors, the Order of Dismissal was defective and could in no way render effect dismissing the case or divesting the jurisdiction from the Court

representative capacity. In this regard, he should have also executed the Stipulation of Dismissal. In the absence of this, same was defective. Additionally, Attorney Phebus, who represented Jacqueline Dennison, plaintiff's decedent's daughter, had not executed the Stipulation of Dismissal either and also expressed objections to the entry of the Order.[4]

In the absence of these attorneys having executed the Stipulation of Dismissal, many of the parties, who were ***necessary*** parties to be included in the plain reading of Fed.R.Civ.P.41(a)(1), in the Michigan Wrongful Death Act, MCLA 600.2922, and under leading case law such as United States v Mansion House Center North, 95 FRD 515 (ED Mo 1982).

Where necessary "parties in interest" had not participated in or had the Dismissal executed by their respective counsels, the Stipulation was clearly not in compliance with Fed.R.Civ.P.41(a)(1), hence not giving effect to the dismissal.

As to their conduct, the parties, including this attorney, continued under the guise and direction of the district court as to negotiations, distribution, hearings, approval of the consent agreement and other essential matters critical to the resolution of this case. This attorney submits, that with respect to such conduct by ratification, the parties should not now be able to bring this jurisdictional argument.

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[4] As of January 7, 1993, Attorney Phebus had not formally entered his appearance, but had apprised the Court that he would be engaging same and, he also expressed objections to the Order on the grounds that his client's interests would be greatly affected.

The Court's "Inherent Powers"

In addition to the sources of authority that were exercised in the procession of the lower court proceeding, the Court also had and properly exercised its *"inherent powers"*. Judge Rosen, in the Order and Opinion dated May 13, 1993, stated that a federal court may "exercise it's inherent powers to prevent abuse," and that such power may be, "as extensive and efficient as may be required by the necessity for their exercise," including "exercising its inherent powers to look behind a stipulation of dismissal to determine whether proper motive or conduct gave rise to the dismissal." (R.34 - Opinion and Order Re: Jurisdiction). United States v Mercedes Benz of North America, Inc., 547 FSupp 399, 400 (ND Cal 1982), quoting Gumbel v Pitkin, 124 US 131, 146 (1888); Thomsen v Terrace Navigation Corp., 490 F2d 88 (2d Cir 1974).

The exercise of this authority was further delineated in Kokkonen v Guardian Life Insurance, ____ US ____; 114 Sct 1673 (1994), made clear that a district court could retain jurisdiction over post-jurisdiction matters if it so provided in entering the judgment under its inherent powers. The Court stated:

> "[E]ven when as occurred here, the dismissal is pursuant to Rule 41(a)(1)(ii) (which does not by its terms empower a district court to attach conditions to the parties' stipulation of dismissal) we think the Court is authorized to embody the settlement contract in its dismissal order (or, what has the same effect, retain jurisdiction over the settlement contract) if the parties agree. [114 Sct at 1677].

Further, in Downey v VanderLaan, ____ F3d ____; 1994 US App LEXIS 18622 (6th Cir 1994), the Sixth Circuit adopted the *Kokkonen* reasoning that a district court is authorized to enforce a settlement after entry of judgment if it expressly retained jurisdiction.

Based on the analysis as set forth, *supra*, this Court did expressly retain jurisdiction and the parties, through their respective representation, in effect, if not by express acceptance, acceded and/or ratified the jurisdiction of the lower court. Moreover, the parties often looked to the deference of the Court in proceedings on several matters.

Although in *Kokkonen*, the district court retained jurisdiction after a dismissal had been granted, this fact does not distinguish the case from our case *sub judice*, where the consent agreement operated legally with the same effect, where it released the Defendant City of Detroit and the named individuals from the matter and where the proceeds would be distributed pursuant to post-judgment motions. *Any arguments now by the Petitioner against the jurisdiction of the lower court are disingenuous, anomalous, and inapposite to the governing* law and evolution of the facts in this case.

II. WHETHER THE DISTRICT COURT ABUSED ITS DISCRETION BY SETTING ASIDE THE CONTINGENCY FEE CONTRACTS AND AWARDING THE REMAINING ATTORNEYS FEES ON A QUANTUM MERUIT BASIS?

The Petitioner argues that the reduction of attorneys fees as outlined in the District Court's Final Opinion is improper because of his alleged valid contingency fee arrangement with the Estate of Malice Green, granting him 1.2 million dollars. However, based on the laws and facts as

outlined in this case, the District Court held that this argument was without merit and insupportable, and on the tenets of the arguments and law submitted in substantive pleading by this attorney, ruled that the attorneys fees to be paid to the remaining attorneys be allocated in quantum meruit, for the reasonable value of their services.

Under Michigan law, an attorney working under a contingency fee agreement who is discharged or withdraws is entitled to compensation for the reasonable value of his services based on quantum meruit. James v Blum, 793 F2d 1292 (6th Cir 1986); Law Offices of Stockler, P.C v Semaan, 135 Mich App 545, 550 (9184); Ambrose v Detroit Edison Co., 65 Mich App 484, 491-492 (1975). The attorney is not entitled to recover under the contingency fee contract, even if he is wrongfully discharged.

In support of the position that quantum meruit is the appropriate measure of determining the remaining attorney fees in this matter, it is necessary to trace the original and development of the facts in this case regarding the proposed contingency arrangements and the issues concerning fees. From the beginning, no valid contingency agreement contract existed. Neither Ms. Grubbs nor Rose Mary Green signed their contingency agreements in their representative capacity. The letters to each of these parties were directed in the names of "Ms. Ediquech Grubbs" and "Ms. Rose Mary Green", respectively, *in their individual and personal capacities only*. Further, there were two (2) separate contingency agreement contracts, each signed separately by the parties, of which neither purported or even surmised that they were being entered as "co-representatives" of the estate. Additionally, neither purported contingency agreement contract was approved or ratified by the Probate Court.

The law is well-established in Michigan that where two or more qualified persons are named as co-personal representatives of an estate, the signature of only one of the co-personal representatives cannot bind the estate, as a matter of law. Action Auto, Inc. v Anderson, 165 Mich 620; 419 NW2d 36, 38 (1988), *lv den'd*, 443 Mich 873 (1988). *Action Auto* delineated the issue of whether one co-personal representative, acting alone, could contractually bind the estate. In *Action Auto*, Kenneth Anderson, Sr., left a Last Will and Testament that left some property to his three sons upon his death. Although all three sons had been named co-personal representatives of the estate, one of his sons, acting alone, entered into a contract to sell the property to Action Auto, a Michigan Corporation. The contract had three signature blocks for all the co-personal representatives, but it was only executed by one of the sons.

Action Auto sued for specific performance, requesting that the court declare the sale valid and binding. The court, in denying such relief, explained, in part, adopting the Uniform Probate Code, that:

> "[I]f two or more persons are appointed co-representatives and unless the will provides otherwise, the concurrence of all is required on all acts connected with the administration and distribution of the estate." 8 Uniform Laws Annotated, Uniform Probate Code, sec. 3-717, p. 340 (1983)

The Court further stated:

> "We are persuaded by these authorities that Michigan should also adopt the requirement of joint action when the will is silent as to the

authority of co-personal representatives to act individually." See, also, Nichols v Pospiech, 289 Mich 324; 286 NW 633 (1939).

Rose Mary Green and Edniquech Grubbs were both appointed co-personal representatives of the Estate of Malice Green by the Probate Court. As such, assent was required by both parties to bind the estate. And, where based on the above, both parties did not jointly enter into any binding agreement for a contingency fee for Attorney Brandy where they did not have such authority.

In the alternative, an additional basis exists for denying Petitioner's argument that a contingency fee agreement existed where in the early part of the proceedings, co-personal representative, Edniquech Grubbs became dissatisfied with her representation by Attorneys Jarrett and Brandy. As the district court stated in its opinion, Ms. Grubbs became dissatisfied with her representation when it became apparent that Attorneys Brandy and Jarrett were working decidedly in favor of the Green side of the family in contravention of the blood lineage of the family. And, starkly in contrast to Attorney Jarrett's argument in his appeal that there was no evidence of Ms. Grubbs expressing objections and concerns over her representation by appellants, outside of the record establishing such evidence, it appears self-evident that Ms. Grubbs had some certain concerns where she sought out the services of this attorney only four weeks into the litigation. In support of this, the Court recognized that Edniquech Grubbs had a right to seek other legal counsel to represent the estate's interests on Ms. Grubbs' behalf and was not bound or enslaved as the Petitioner's client. Ambrose v Detroit Edison, 65 Mich App 484 (1975).[5] Accordingly, once Attorneys

[5] Ambrose v Detroit Edison, 65 Mich App 484; 237

Brandy and Jarrett were discharged by Ms. Grubbs, even if Petitioner could argue they had a binding written contingency agreement, it became ***de jure***, invalid at the time of discharge, where the co-personal representatives were clearly not acting jointly.

Grounded in this same analysis is the corollary, that once Ms. Grubbs, along with other blood lineage interested parties, expressed her objections and dissatisfaction with Petitioner's representation of her and proceeded to retain this attorney, Attorney Jarrett's claim for fee-sharing failed as well. MCR 8.121, incorporated by reference MRPC Rule 1.5 provides, in pertinent part, that:

> A division of a fee between lawyers who are not in the same firm may be made only if:
>
> 1. The client is advised of and ***does not object*** *to the participation of all lawyers involved...*
>
> 2. The total fee is unreasonable.

Without even addressing the second-prong of the rule, Attorney Jarrett's fee-sharing agreement clearly fails under the analysis and facts set forth above.

Summarily, under either analysis discussed above (*a.* No valid signed agreement, and *b.* discharge of counsel), Petitioner does not have any merit to the argument that he is entitled to fees under a contingency agreement equating 1.2 million and/or that fee-sharing of same is proper. Hence, as this attorney has urged and agreed to, the Petitioner is only

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NW2d 520 (1976).

entitled to fees for the reasonable value of his services, viz., *quantum meruit*. *Ambrose*, supra.

In *Ambrose*, the court determined that the discharged attorney was entitled to the contingent fee percentage agreed upon with his client prior to discharge. The Court of Appeals, although agreeing that it was proper to impose a lien on the settlement, determined that the trial court erred in deciding that the full contingent fee amount was to be the amount covered by the lien.

The appellant court explained:

> "[T]he majority view (in Michigan) is that an attorney on a contingent fee arrangement who is wrongfully discharged, or who rightfully withdraws, is entitled to compensation for the reasonable value of his services based upon quantum meruit, and not the contingent fee contract. The rationale for that rule was discerned in Fracase v Brent, 6 Cal3d [784], 789-790; 100 Cal Rptr [385], 388-389; 494 P2d [9], 12-13 ([1972]);
>
> > "The right to discharge is of little value if the client must risk paying the full contract price for services not rendered upon a determination by a court that the discharge was without legal cause. The client may frequently be forced to choose between continuing the employment of an attorney in who he has lost faith, or risking the payment of double contingent fees equal to the greater portion of any amount eventually recovered... Unless a rule us adopted allowing an attorney as full compensation the reasonable value of services rendered to the time of discharge, clients will often feel required to

> continue in their service attorneys in whose integrity, judgment or capacity they have lost confidence."

Edniqech Grubbs and Rose Mary Green entered into a contingency agreement with Attorney Brandy wherein Attorney Brandy and Mr. Jarrett, by way of the purported fee-sharing agreement, would receive 1/3 of the settlement that was awarded to the estate. Ms. Grubbs discharged Brandy and Jarrett early in their attorney/client relationship. In accordance with the case law, *supra*, Ms. Grubbs' agreement with Attorney Brandy and Jarrett was null and void at that juncture. *The case law speaks clearly on this issue.* If Ms. Grubbs remained bound by her initial contingency fee agreement, she would essentially be enslaved to the attorney(s) she no longer trusted in ***any*** capacity.

Michigan has adopted this above rule, as supported by the district court's opinion, and thus, the remaining attorneys should be entitled to fees from the estate of Malice Green in an amount commensurate with the reasonable value of their services, i.e. in *quantum meruit*. And, as will be outlined more fully, infra, this amount would equal 50% to Attorneys Jarrett and Brandy (as co-counsels for co-personal representative Rose Mary Green) at or around an amount of $400,000.00; and 50% to Attorney Dorsey (as sole attorney for co-personal representative Edniquech Grubbs), at or around an amount equal to $400,000.00.

Attorneys Brandy and Jarrett, as co-counsels, initially represented both co-personal representatives of the Estate of Malice Green, *Rose Mary Green* and *Edniquech Grubbs*, respectively. Initially, there was an apparent and competing conflict of interest arising out of Attorneys Brandy and Jarrett representing both personal representatives because each

representative represented different competing and contrary family members, (i.e. Edniquech Grubbs represented the blood lineage side of the family, while Rose Mary Green represented the statutory side of the family). Therefore, conflicts and problems were certain to arise between the competing factions as did eventuate and come to fruition early on in the case.

Ms. Grubbs thereinafter briefly sought the services of Attorney Thurswell who soon thereafter waived his $200,000.00 Estate fee despite his services to the Estate because of the apparent conflicts that had arisen.

Almost instantly into the case, an offer was quickly, within weeks of the tragedy, dropped in the lap of the Estate lawyers per the edict of the Mayor as a surreal form of "riot" insurance. Immediately thereafter, it became clear to Ms. Grubbs that Attorney Brandy and Ms. Jarrett were primarily interested in representing the interests of Rose Mary Green, and not Edniquech Grubbs and her side of the family. Consequently, Attorneys Brandy and Jarrett were unable to successfully reach a settlement with the City of Detroit or between the interested parties because of the continuing objections and complaints raised by Ms. Grubbs and the blood lineage side of the family. Ms. Grubbs' lack of trust in Brandy's and Jarrett's legal representation of the Estate's interest on her behalf was increasing; and, Mr. Jarrett was incapable of moving the case forward. Upon filing an appearance, this counsel began setting the case on par mirroring the ultimate resolution and agreement that resulted in this matter. First, through negotiations with Brunetta Brandy, this counsel convinced her to reduce the attorney fee by $550,000.00 and return the same to the Estate. At a meeting held in the office of Jerome P. Barney, this attorney and counsel Barney, in an effort to protect the interests of the Estate, particularly the blood lineage side of the family, urged

Brandy to reduce the 1.7 million requested attorney fee by $550,000.00 by expressing to her the belief that the attorneys fees as requested were unreasonably excessive and would be strongly resisted. It was further expressed to Brandy that the $550,000.00 should be reverted back to the Estate for a more equitable distribution among the blood lineage side of the family. Counsels also retorted to Brandy that if she persisted in seeking the full amount of the originally requested attorneys fees, that such unreasonable conduct would be brought before the Court. Brandy, at this time, agreed to reduce the fee to their now requested 1.2 million dollars.

Prior to this attorney filing an appearance, Attorney Thurswell was representing Edniquech Grubbs, as co-personal representative, and at or around the time he was discharged (four weeks into the proceeding), there still existed only an offer. Attorney Thurswell, per agreement with Attorneys Brandy and Jarrett, would have received but for his waiver thereof, an attorneys fee of $200,000.00 for his efforts on behalf of the estate. However, Attorney Thurswell did waive his fee, and at the time this attorney entered his appearance, this attorney stood in Attorney Thurswell's position, where Edniquech Grubbs left Mr. Thurswell and sought the services of this attorney.

By law, said attorney fee must be paid to this attorney by virtue of this counsel undertaking the same duties and responsibilities and more, as established in the record below.

This attorney was not only able to acquire the trust of Edniquech Grubbs so that they could work together as a team, but was instrumental in bringing this matter to its current settlement stage. Prior to this counsel's involvement, there was no meeting of the minds among and/or between the interested parties, and, the possibility of bringing this matter

to resolution had escaped the interested parties. ***At the time of this attorney's appearance in this case, this case had not been and could not have been settled*** because Ms. Grubbs had objected numerously to the settlement, distrusted Jarrett and Brandy and basically, was unrepresented by any counsel. The case could not be settled unless all the interested parties agreed on an amount, the distribution, and unless the judge agreed. Further, this attorney had to correct Attorneys Brandy and Jarrett's error of having negotiated with the City of Detroit a structured settlement, where the City's normal practice of offering a cash settlement was more appropriate for the parties in this case, considering their maturity, and by reason of the difficulty of determining the present value of structured settlements.

It should be added here that the distribution agreement was near the penny to what counsel's recommendations were once entering this action as evidenced by the numerous correspondences written to and by counsel. Settlement through all counsel's efforts hereunder, was and could have been only achieved by expending hundreds upon hundreds of hours negotiating, and meeting with attorneys and the family members of Malice Green, researching the numerous areas of law which have been raised as significant issues throughout this litigation, drafting pleadings, court appearances, and utilizing several resources at great cost and expense to counsel.

Furthermore, when this attorney entered this case, counsel has thereafter worked tirelessly reviewing, authorizing, ratifying and responding to pleadings filed by Attorneys Brandy and Jarrett on behalf of the Estate; some of which placed the Estate in potential jeopardy. Most notable was the Writ of Mandamus filed an voluntarily dismissed by

Mr. Jarrett which delayed the City Council's approval of the Consent Agreement for eighteen months. The district court urged that said approval by the City Council be sought; and instead of doing so immediately, in order to effectuate the distribution forthwith, Mr. Jarrett chose to file a frivolous pleading while the City Council was waiting for over a year to review the Consent Agreement. Ultimately, Mr. Jarrett withdrew the Writ of Mandamus and followed the initial direction of the Court. Other instances of Mr. Jarrett's counterproductive, negative, and benign conduct included seeking competing jurisdiction in the Wayne County Circuit and Probate court, risking dismissals by Defendant, seeking to have the escrow account and checks issued thereof only in the name of Rose Mary Green, contesting jurisdiction at every avail even when it became apparent that it was diminishing potential resolution of this matter. Additionally, counsel Brandy and Jarrett have practically duplicated each other's services in an amount exceeding $600,000.00 and even attempting to represent both co-personal representatives from the beginning, knowing of the clarity of the conflict of interest, but all in an attempt to maximize their fees.

Moreover, during this entire litigation process, Mr. Jarrett has attempted to exclude Ms. Grubbs from making decisions regarding her interests as co-personal representatives of the Estate by performing unilaterally and without authority on behalf of the entire estate when he and Attorney Brandy only represented half of the Estate. Now, Attorney Jarrett is seeking to exclude this attorney, as counsel for Ms. Grubbs, from obtaining duly owed attorneys fees. Counsel need not cite how courts fail to recognize or reward such activity by co-fiduciaries or their attorneys. Counsel is, in fact, entitled to an amount, in quantum meruit, equal or greater than the amounts for the attorneys representing co-personal representative, Rose Mary Green, the actual amount

to be distributed as $400,000.00 to Attorney Dorsey for his representation of one-half of the estate and $400,000.00 for Brandy and Jarrett for their representation of the other half of the estate, especially when their services were highly duplicitous and where the majority of their efforts were not devoted towards the interests of the estate, rather towards their own self-interests in pursuing the attorneys fees.

The case law provides that an attorney who is subsequently retained after the discharge of the first attorney and after an offer of settlement has been made, ***is entitled to an equal portion if not more than the first attorney***. Kidd v CSX Transportation, et al., US Dist LEXIS (1990); Stallman v Distron Corp., 803 P2d 212 (1990); Altman v Bowman, 198 Ill App 3d 329, 555 NE2d 997 (1990); Madison v Goodyear Tire and Rubber Co., 8 Kan App 2d 575; 663 P2d 663 (1983).

From the inception of this case, only four (4) weeks after Jarrett and Brandy entered the matter, this attorney met with the Court, conferenced with all of the interested parties' attorneys regarding distribution, forced Attorney Brandy to waive the $550,000.00 of the requested attorney fee or face being embarrassed in front of the Court by citing that the attorneys fee was too excessive and that the money was needed for a more equitable distribution of the shares given to the blood lineage members of the family. Contrary to appellant's assertion, Brandy's act of waiving the fee was not a charitable act on her part, but was done at this counsel's urgence. Because the amount represented a portion of fees which this attorney would have been entitled to, this counsel agreed to waive the fee as well. Additionally, this attorney greatly assisted in the distribution. The ultimate distribution had been worked out weeks in advance, initiated by this

attorney's efforts and suggestion. This attorney's recommendation for distribution was near the penny of the actual distribution reached for all the parties because it was fundamentally fair.

Additionally, this attorney reviewed the offer, changed lopsided distribution, moved settlement along through the City Council by correspondence and telephone calls, drafted and filed Motions to Distribute Funds, thwarted Jarrett's procedural moves, including competing parallel jurisdiction before Judge Mack of the Probate Court and Judge Stacey of the Circuit Court, which the District Court clearly saw through as ***"forum shopping"***. This attorney also hire probate and annuity experts, who carefully reviewed all estate considerations and were relied upon repeatedly by the lower Court.

Meanwhile, Jarrett and Brandy, who have opposed and questioned this attorney's work in this matter in their previous appeals, were engaged in excessive and double billing, client tampering, forum shopping, improper *ex parte* communications, unnecessary delay and waste in filing the Writ of Mandamus, which was later withdrawn 18 months later, and expending hundreds upon hundreds of hours towards solely pursuing their excessively requested attorneys fees. In essence, while this attorney was working for to protect the estate, Attorneys Brandy and Jarrett, particularly Jarrett, were working for the preservation and/or status quo of their originally requested attorneys fees. This is evidenced by Judge Rosen excluding THREE-HUNDRED HOURS OF JARRETT'S TIME WHERE THE COURT FOUND THAT THIS TIME WAS DEDICATED ONLY TO HIS ATTEMPTS TO COLLECT HIS ATTORNEYS FEES AND NOT TO THE BENEFIT OF THE ESTATE.

For the most part, this case was made complex solely because of Attorney Jarrett's obdurate attempt to literally rob from the estate to generate his excessive requested attorneys fees. It is submitted to this Court that this matter could have been completely resolved years ago were it not for the conduct of Attorneys Brandy and Jarrett, and particularly Attorney Jarrett, by reason of the City's quick response and efforts to offer, settle and assistance in working out the distribution. Absent Jarrett's obstinate conduct throughout — the failed attempts at divesting the district court of jurisdiction, the filing of the Writ of Mandamus, incessant Motions and attacks upon this Counsel, this matter could have and should have been resolved earlier. Following this tyrannical conduct, Petitioner is now the party belaboring this matter more by the filing of this judicially wasteful appeal. For this conduct, as outlined herein, counsel Jarrett should be punished and sanctioned from receiving his fees, allowing his fees to be directed back to the estate.

III. WHETHER THE DISTRICT COURT JUDGE ASSUMED THE ROLE OF AN ADVOCATE IN THIS CASE, REQUIRING DISQUALIFICATION.

It is submitted that the Court was concerned with ensuring that the interested parties received a fair distribution from the settlement.

As can be seen from the preceding arguments, the District Court judge acted within his discretion.

CONCLUSION

Based on the foregoing analysis and controlling law as established in the record below and in this brief herein, Respondent, Saunders V. Dorsey, respectfully requests that the decision of the United States Court of Appeals, Sixth

Circuit, be upheld.

Respondent also respectfully requests that the attorneys fees for Attorney Jarrett be denied and returned to the Estate for distribution, in light of the highly reprehensible conduct that has been outlined herein.

Justice Brandeis once wrote that "sunlight is the best disinfectant." If this case stands for anything, which this counsel submits it will for years to come, it should highlight the fact that the formulae for attorneys fees should not always be rigidly adhered to and that a co-personal representative, or any client for that matter, should not be enslaved to a former attorney who that party discharges with cause.

Saunders V. Dorsey — Date: 10-10-97

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